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SECRETARY OF STATE

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
HICKMAN COUNTY)	
GOVERNMENT AND JERRY)	
NASH)	
)	
RESPONDENTS		DOCKET NO. 04.30-095208A
		CASE NO. 06-0590

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Director's Order and Assessment and the Respondent's Petition to Appeal and the representation of counsel that an agreement and settlement had been reached. The Respondent enters into this Agreed Order solely for reasons of compromise of the pending claim, to avoid costly litigation, and in order to fully cooperate with the State of Tennessee in this matter. The Board therefore adopts the following findings of fact and conclusions of law and order of corrective action to which the parties have agreed, as is shown by signature of counsel in settlement of Case No. 05-077D

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

The Hickman County Board of Education is an Agency of the Hickman County Government (hereinafter the "Respondent Hickman County"). Service of process may be made on Respondent Hickman County through the Honorable Steve Gregory, Hickman County Mayor, Hickman County Courthouse, No. 5 Public Square, Centerville, Tennessee 37033.

III.

Dr. Jerry Nash (hereinafter the "Respondent Nash") is on the Hickman County Board of Education and is responsible for the development of the new Hickman County High School (hereinafter the "site"). Service of process may be made on Respondent Nash at 115 Murphree Avenue, Centerville, Tennessee 37033.

IV.

JURISDICTION

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 et seq., the Water Quality Control Act, (hereinafter

the "Act") has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 ("Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

V.

The Respondents are "persons" as defined at T.C.A. §69-3-103(20) and, as herein described, have violated the Act.

VI.

Mill Creek and its respective unnamed tributaries referred to herein, are "waters of the state," as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. 69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, "Use Classifications for Surface Waters," is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*.

Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VII.

Tennessee Code Annotated §69-3-108 requires a person to obtain a permit from the department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the "ARAP") that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

FACTS

VIII.

On December 19, 2005, the division issued Director's Order 05-074D to the Hickman County Government and Kerry Lankford doing business as Lankford and Gilliam Excavating. The order assessed penalties for failure to comply with the general permit for Storm Water Discharges Associated With Construction Activity (hereinafter the "TNCGP") and causing a condition of pollution to waters of the state.

IX.

On August 1, 2006, division personnel received a complaint that construction equipment was operating in a stream on the site and filling it with gravel. Following the

complaint, division personnel spoke via telephone to Mr. Kerry Lankford, who informed division personnel that he did not have responsibility for the area in question and that it was not included in his TNCGP coverage.

X.

On August 2, 2006, division personnel returned to the site and spoke with a representative of the general contractor. He informed division personnel that the area in question was not part of the Hickman County High School building project.

XI.

On August 3, 2006, division personnel returned to the site in an effort to meet the bulldozer operator and determine who was responsible for the clearing activities. James Hassell and Steve Hassell were onsite. Steve Hassell informed division personnel that he was the owner of the bulldozer and that he had been hired to clear the land by the Hickman County Board of Education. James Hassell was onsite assisting Steve Hassell with repairs to the equipment. Division personnel explained that an ARAP was needed before any alteration to waters of the state could occur. In addition, erosion prevention and sediment control (EPSC) measures would be necessary to prevent any further impact to the unnamed tributary to Mill Creek.

XII.

On August 4, 2006, Respondent Nash called and spoke with division personnel regarding the site. Respondent Nash said that the site was being cleared for agricultural

use by the new high school. Division personnel responded that any alteration to waters of the state required authorization under an ARAP prior to commencement of the activity.

XIII.

On August 9, 2006, division personnel issued a Notice of Violation to each of the Respondents for alteration to waters of the state without coverage under an ARAP and causing a condition of pollution. Along with each NOV, division personnel included a copy of a stream determination that the division previously performed at the site. In the stream determination letter, dated March 3, 2005, division personnel identified the impacted stream as waters of the state.

XIV.

During the course of investigating this matter the division incurred damages in the amount of SEVEN HUNDRED FOURTEEN DOLLARS AND SIXTY-SEVEN CENTS (\$714.67).

VIOLATIONS

XV.

By failing to comply with the terms and conditions of the permit described herein the Respondents have violated T.C.A. §69-3-108(a)(b) and §69-3-114(b) which state, in part:

§69-3-108(a):

(a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a

publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§69-3-108(b)(1):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XVI.

By causing or allowing pollution of the waters of the state as described herein, the

Respondents have violated T.C.A. §69-3-114(a), which states in part:

§69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable

accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER

XVII.

WHEREFORE, PREMISES CONSIDERED, it is ORDERED by the Board that:

1. As soon as possible, but no later than 30 days of receipt of this Order, the Respondents shall implement the EPSC measures contained in the previously approved Corrected Action Plan to ensure that no additional material leaves the site and enters waters of the state.
2. The Respondents shall maintain appropriate EPSC measures to ensure that no additional material leaves the site and enters waters of the state. These professionally designed controls shall be maintained until final grade and permanent erosion preventive cover is established.
3. The Respondents shall obtain certification for all supervisory level personnel who are expected to be responsible for land disturbance activities or erosion prevention and sediment control measures no later than December 31, 2007. Certification may be obtained through the Fundamentals of Erosion and

Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation. Documentation of successful completion shall be sent in duplicate, to the Manager of the Enforcement and Compliance Section of Water Pollution Control, and to the manager of the Columbia Environmental Field Office. A class schedule may be found on the Division's website at <http://www.tnepsc.org>.

4. The Respondents shall pay to the division a CIVIL PENALTY in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00), payable as follows:
 - a. The Respondents shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00), payable within 30 days of receipt of this Order.
 - b. In the event the Respondents fail to comply with item one above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.
 - c. In the event the Respondents fail to comply with item two above in a timely manner, the Respondents shall submit a CIVIL PENALTY

payment in the amount of ONE THOUSAND DOLLARS (\$1,000.00), payable within 30 days of default.

d. In the event the Respondents fail to comply with item five above in a timely manner, the Respondents shall submit a CIVIL PENALTY payment in the amount of TWO THOUSAND DOLLARS (\$2,000.00), payable within 30 days of default.

e. Damages in the amount of \$714.67 are hereby assessed and shall be paid within 30 days of receipt of the executed Order.

7. The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order. In order to be eligible for this time extension, the Respondents shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due in 30 days.

8. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondents are advised that the foregoing ORDER is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondents in the future. Failure to comply with this order will result in additional penalties.

The non-contingent CIVIL PENALTY and DAMAGES shall be paid in full to the "Treasurer, State of Tennessee", and sent to Sam Wallace, Assistant General Counsel, Tennessee Department of Environment and Conservation, 20th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243, within thirty (30) days of receipt of this ORDER after it is approved by the Board and filed with the Office of Secretary of State.

WAIVER OF APPEAL AND RESERVATION OF RIGHTS

The Respondent knowingly and voluntarily waives its Rights of Appeal and judicial review of this AGREED ORDER, which is a FINAL DECISION AND ORDER of the Board.

The Department reserves the right to request modifications to the Engineering Report/Remedial Action Plan as deemed necessary by the Department to achieve compliance with the Act. Such modifications shall be submitted to the Division within the timeframe to be determined by the Department.

REASONS FOR DECISION

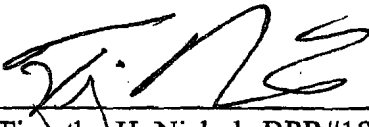
The Board approves this AGREED ORDER because it is a fair and reasonable settlement of the matter. The Board also approves of settlements in that they conserve the resources of the Department and the Board.

A copy of this FINAL DECISION AND ORDER shall be served upon the Attorney for Respondent by certified mail, return receipt requested. This FINAL DECISION AND ORDER shall become effective upon entry.

APPROVED FOR ENTRY:

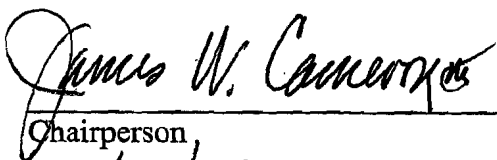


Sam Wallace BPR#5207
Assistant General Counsel
Tennessee Department of Environment and Conservation



Timothy H. Nichols BPR#18156
Kirksey & McNamee PLC
Attorney for the Respondents

FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:



Chairperson

6/19/07

Entered in the Office of the Secretary of State, Administrative Procedures
Division, this 19th day of June, 2007.

Handwritten signature of Charles C. Sullivan, II in cursive script.

Charles C. Sullivan, II, Director
Administrative Procedures Division